# Petition

81-1381

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No.

IN THE

# Supreme Court of the United States

October Term, 1981

UNITED PARCEL SERVICE OF AMERICA, INC.,
*Petitioner,*

*v.*

UNITED STATES POSTAL SERVICE,
*Respondent.*

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

## PETITION FOR WRIT OF CERTIORARI

BERNARD G. SEGAL,
*Counsel of Record*
ROBERT L. KENDALL, JR.,
JOHN E. MCKEEVER,
*Attorneys for Petitioner*

SCHNADER, HARRISON, SEGAL & LEWIS
1719 Packard Building
Philadelphia, Pennsylvania 19102
(215) 988-2000
*Of Counsel.*

International Printing Co., 711 So. 50th St., Phila., Pa. 19143 — Tel. (215) 727-0711

## QUESTION PRESENTED FOR REVIEW

Where the United States Court of Appeals for the District of Columbia Circuit has consistently construed the statute that governs postal ratemaking to require the rates for each class of mail to cover all costs which are a consequence of providing service to the class and the statutory language supports that construction, did the Second Circuit err in interpreting the statute to permit costing to include only short run variable costs?

## LIST OF PARTIES IN THE COURT BELOW

The following were parties in the court below:

American Business Press, Inc.
American Cancer Society
American Lung Association
Association of American Publishers, Inc.
Classroom Publishers Association
Council of Public Utility Mailers
Direct Mail/Marketing Association, Inc.
Dow Jones & Company, Inc.
International Labor Press Association, AFL-CIO/CLC
Magazine Publishers Association, Inc.
Mail Order Association of America
March of Dimes Birth Defects Foundation
National Association of Greeting Card Publishers
National Easter Seal Society
National Wildlife Federation
Newsweek, Inc.
Parcel Shippers Association
Reader's Digest Association, Inc.
Recording Industry Association of America, Inc.
St. Jude Children's Research Hospital
Time Incorporated
United Parcel Service of America, Inc.[1]
United States Postal Service
Warshawsky & Company

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1. Other than wholly-owned subsidiaries, petitioner United Parcel Service of America, Inc. has no affiliates or subsidiaries except for Service Plants Corporation, the stock of which is held in trust for the benefit of the shareowners of United Parcel Service of America, Inc. Additionally, in accordance with Canadian law, qualifying shares of stock in petitioner's Canadian subsidiaries are held by individuals who are Canadian citizens.

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## OPINIONS OF THE COURT AND ADMINISTRATIVE AGENCIES BELOW

Neither the opinion of the United States Court of Appeals for the Second Circuit, dated November 2, 1981 (1a-48a) nor the order of the court denying rehearing, dated January 11, 1982 (1d), has been reported.[2] The decision of the Governors of the United States Postal Service, dated March 10, 1981 (1b-140b), has not been reported.

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2. References to Appendices A, B, and C are to the Appendices to the Petition for a Writ of Certiorari in **National Association of Greeting Card Publishers v. United States Postal Service**, No. 81-1304, a companion case; those Appendices are incorporated herein by reference. Appendix references denominated d are to Appendix D printed at the end of this Petition.

## STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Second Circuit (1a-48a) was entered on November 2, 1981. On January 11, 1982, the court denied a petition for rehearing (1d).

This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1), which authorizes review by writ of certiorari of judgments of the United States courts of appeals.

## STATUTES INVOLVED

The determination of postal rates is governed by the Postal Reorganization Act of 1970, as amended (the "Act"), 39 U. S. C. § 101 *et seq.*, and in particular by Chapter 36 of the Act, 39 U. S. C. §§ 3601-3685. Pursuant to that chapter, the United States Postal Service (the "Postal Service") requests the Postal Rate Commission (the "Commission"), an independent governmental body, to issue a recommended decision on changes in postal rates and fees. In arriving at its recommended decision, the Commission must be guided by § 3622(b) of the Act. That section provides:

> "(b) Upon receiving a request, the Commission shall make a recommended decision on the request for changes in rates or fees in each class of mail or type of service in accordance with the policies of this title and the following factors:
>
> (1) the establishment and maintenance of a fair and equitable schedule;
>
> (2) the value of the mail service actually provided each class or type of mail service to both the sender and the recipient, including but not limited to the collection, mode of transportation, and priority of delivery;
>
> (3) *the requirement that each class of mail or type of mail service bear the direct and indirect postal costs attributable to that class or type plus that portion of all other costs of the Postal Service reasonably assignable to such class or type;*
>
> (4) the effect of rate increases upon the general public, business mail users, and enterprises in the private sector of the economy engaged in the delivery of mail matter other than letters;

(5) the available alternative means of sending and receiving letters and other mail matter at reasonable costs;

(6) the degree of preparation of mail for delivery into the postal system performed by the mailer and its effect upon reducing costs to the Postal Service;

(7) simplicity of structure for the entire schedule and simple, identifiable relationships between the rates or fees charged the various classes of mail for postal services;

(8) the educational, cultural, scientific, and informational value to the recipient of mail matter; and

(9) such other factors as the Commission deems appropriate." 39 U. S. C. § 3622(b) (emphasis added).

The full text of the pertinent sections of the Act is set forth in Appendix C to the Petition in No. 81-1304.

## STATEMENT OF THE CASE

This case involves a paralyzing conflict between circuits in a matter that critically requires a uniform approach nationwide—the establishment of proper postal rates. The Postal Service will receive revenues in excess of $23 billion in 1982, and postal ratemaking affects every business and virtually every individual in the United States. The present conflict between circuits leaves postal ratemaking in a state of uncertainty.

In this case, the Court of Appeals for the Second Circuit exercised jurisdiction under 39 U. S. C. § 3628 over appeals from the postal rates recommended by the Postal Rate Commission in Docket No. R80-1, which the Governors of the Postal Service allowed to go into effect. In an opinion by Circuit Judge Meskill, joined by Circuit Judge Kearse and District Judge Coffrin, the court adopted an erroneous interpretation of the postal ratemaking statute as a result of the court's incorrect understanding of the Act and its legislative history. The court's interpretation of the Act is directly contrary to the correct interpretation announced by the Court of Appeals for the District of Columbia Circuit in prior postal rate cases. The existence of this conflict between the circuits is clearly stated in the opinion of the Second Circuit.

Since the passage of the Postal Reorganization Act, the primary issue in postal rate proceedings has been the proper construction of 39 U. S. C. § 3622(b), and in particular the proper interpretation of § 3622(b)(3), the costing provision of the Act (quoted above at pages 3 and 4). All five general postal ratemaking proceedings since the Act was passed in 1970 have resulted in appeals challenging the adopted rates on costing grounds.

In deciding the appeals in the first general postal ratemaking case, the District of Columbia Circuit, in a unanimous concurring opinion, discussed the central role

of § 3622(b)(3) in postal ratemaking. **Association of American Publishers, Inc. v. Governors of the United States Postal Service,** 485 F. 2d 768, 776-79 (D. C. Cir. 1973) ("**American Publishers**") (Bazelon, C.J., Tamm, J., and Wyzanski, D.J.). In the appeals in the second general postal ratemaking case, the District of Columbia Circuit, after an exhaustive review of the language of the Act and its legislative history, specifically decided the statutory interpretation issue involved here. **National Association of Greeting Card Publishers v. United States Postal Service,** 569 F. 2d 570 (D. C. Cir. 1976), *consol'd case vacated on other issues sub nom.* **United States Postal Service v. Associated Third Class Mail Users,** 434 U. S. 884 (1977) ("**NAGCP-I**") (Bazelon, C.J., Robinson and MacKinnon, JJ.). The court held:

> "Subsection 3622(b)(3) provides, in short, that the Postal Rate Commission must first of all attribute to each mail class or postal service all postal costs which may reasonably be determined, through variability theory as well as through other reasonable inferences of causation, to be the consequence of providing the service. It must then distribute among the mail classes and services that significant portion of all remaining costs of the Postal Service that may reasonably be assigned to each on the basis of best available cost-of-service estimates. The residuum of costs is subject to discretionary allocation in accord with the noncost factors set forth in the Act." 569 F. 2d at 589 (footnote omitted).

Ruling on the appeals in the fourth general postal ratemaking case,[3] the court reaffirmed the **NAGCP-I** inter-

3. The appeals in the third general postal ratemaking case were dismissed as moot. **National Association of Greeting Card Publishers v. United States Postal Service,** D. C. Cir. No. 76-1611 (June 27, 1978). See **NAGCP-III** at 425 n. 56.

pretation of the Act. **National Association of Greeting Card Publishers v. United States Postal Service**, 607 F. 2d 392 (D. C. Cir. 1979), *cert. denied sub nom.* **Dow Jones & Co. v. United States Postal Service**, 444 U. S. 1025 (1980) ("**NAGCP-III**") (Tamm and Leventhal, JJ., and Bryant, D.J.). Thus, the District of Columbia Circuit has had extensive experience from the very beginning with the ratemaking provisions of the 1970 Act and has thoroughly examined, reexamined, and affirmed its construction of those provisions as recently as 1979.

Yet, in this case, involving appeals in the fifth general postal ratemaking proceeding, the Second Circuit rejected what it referred to as the "supposed 'plain reading'" and "the extreme position" of the District of Columbia Circuit (20a, 28a). The Second Circuit went on to say that the District of Columbia Circuit had "misread the plain language of section 3622(b) and misconstrued the legislative history of that section," and that "the D. C. Circuit's decisions in **NAGCP I** and **III** reflect a patent disregard . . . for the statutory limitations on the scope of judicial review imposed by 39 U. S. C. § 3628 (1976) and 5 U. S. C. § 706 (1976)." (19a).

This sharp condemnation of a sister court is rooted in the Second Circuit's mistaken belief that one phrase taken from a statement authored by certain members of the House of Representatives was part of the report of the Conference Committee that resolved differences between the House and the Senate on appropriate postal ratemaking standards; but far from being part of the report of the Conference Committee, the statement relied on by the Second Circuit was not even presented to the Senate, the statement not having been published until after the Senate had adopted the Conference Committee bill. Yet, the Second Circuit relied on a phrase from that statement —a phrase that, taken alone, asserts a position that was

actually *rejected* by the Conference Committee--to reach a construction of the costing provision of the Act that is contrary to the previously settled interpretation. In particular, the Second Circuit held:

> "[W]e reject the D. C. Circuit's rulings to the extent that they interpreted section 3622(b) as requiring the attribution and assignment of costs based on cost-of-service principles to the maximum extent possible. There is nothing in the legislative history to suggest that attribution of fifty percent of postal costs is inadequate." (27a) (footnote omitted).

Thus, the Second Circuit held that § 3622(b)(3) does not require all postal costs that are a consequence of providing service to a particular class to be allocated, using cost-of-service principles, to that class.

## REASONS FOR GRANTING THE WRIT

### I. The Importance of the Question at Issue and the Need for a Uniform Interpretation of the Act Nationwide Require Allowance of the Writ.

The Postal Service wields tremendous economic power. It has an annual budget of approximately $23 billion, and its rate request in this case was designed to generate $3.75 billion of additional revenue during the twelve months beginning March 21, 1981. Postal rates affect every business, and directly or indirectly every person, in the United States. In addition to having a pervasive impact on its users, the Postal Service also competes with private enterprise firms in the delivery of non-letter mail. Consequently, to prevent the subsidizing of a competitive class of mail by revenues from a class in which the Postal Service enjoys a monopoly and with other purposes as well, Congress required that the rates for each class of mail enable the class to recover its own costs and, in effect, to stand on its own feet. 39 U. S. C. § 3622(b)(3). In addition, postal rates must be fair and equitable, and must satisfy principles of fair competition by the Postal Service with enterprises in the private sector, such as petitioner United Parcel Service. 39 U. S. C. §§ 3622(b)(1), (4). Accordingly, assuring compliance with the standards prescribed by Congress for postal ratemaking is a matter of critical national importance.

This is especially so here, where a panel of the Second Circuit has sharply disagreed with the ratemaking standards consistently endorsed by the District of Columbia Circuit. Obviously, it is impossible for the Postal Service to request, and for the Postal Rate Commission to recommend, nationwide rates that obey two different and incompatible sets of ratemaking standards. Obviously, too,

the Postal Service may not charge one set of rates to mailers in one circuit and a different set of rates to mailers in another circuit. Postal rates must be based on a uniform, nationwide ratemaking approach.

The costing methodology used to allocate postal costs strongly influences the rates charged to mailers. Rates based on the Second Circuit's interpretation of the costing requirements of the Act would almost certainly be radically different from rates based on the District of Columbia Circuit's decisions. This conflict between the circuits will inevitably create confusion in the administrative process. Because the Second Circuit has rejected a consistent line of holdings of the District of Columbia Circuit, the Postal Service cannot possibly know which interpretation of the Act should guide its next rate filing with the Postal Rate Commission. Parties that intervene in postal rate cases—users of the various classes of mail as well as competitors of the Postal Service, such as petitioner United Parcel Service—will likewise be unsure of the basis on which they could question the rates requested by the Postal Service. Similarly, the Commission cannot be expected to know which interpretation it should apply in recommending postal rates. Which party wins the race to the courthouse will literally determine whether a given rate schedule will be permitted to remain in force or will be rejected.

This confusion will pervade the administrative process because no one can predict with certainty in which circuit the appeal of the next postal rate case will be heard. Thus, the enormous effort expended during months of preparation and additional months of hearings could well be wasted, because of the unpredictable lottery that will ensue in determining the circuit in which the inevitable appeal will be heard. That uncertainty and waste can be avoided only if this Court resolves the conflict between the circuits.

Furthermore, because the levels of postal rates for the various classes and subclasses of mail determine, as a practical matter, not only who uses the mails, but also who is able to compete with the Postal Service in its non-monopoly classes of mail, allowance of this petition is of enormous importance. The decision of the Second Circuit—unlike that of the District of Columbia Circuit—vastly increases the likelihood that revenues from one class of mail will be used to subsidize other classes of mail. In particular, by dramatically reducing the amount of costs that must be allocated on a cost-of-service basis to the individual classes and subclasses of mail, the Second Circuit has made it possible for the Postal Service to use revenues derived from its monopoly on first class letter mail to subsidize other classes of mail where it competes with private firms. That result is clearly proscribed by the statute, and this Court should act now to insure compliance with the statutory requirements.

## II. The Court Below Erred in Rejecting the District of Columbia Circuit's Consistent Interpretation of the Act.

The Second Circuit reached its mistaken statutory construction because it misunderstood the legislative history that led to the adoption of the Act. Subsequent legislative history demonstrates that Congress approved the District of Columbia Circuit's interpretation of the Act.

### A. The Court Below Based Its Interpretation of the Act on a Mistaken Understanding of the Language of the Act and Its Legislative History.

The District of Columbia Circuit, after an extensive analysis of the statute and its legislative history, has twice held that the rates for each class of mail must cover all of the costs which are a consequence of providing service to

the users of the class, including the long run variable costs of the class plus such additional costs as may reasonably be assigned on a cost-of-service basis. By contrast, the Second Circuit has held that the rates for each class of mail need cover only the short run variable costs of the class. Significantly, the Second Circuit said that it would find acceptable an overall level of attributable costs amounting to only 50% of total postal costs. (27a).

The Second Circuit reached its result by placing heavy reliance on part of one sentence that refers to costs "that vary over the short term in response to changes in volume," a phrase found in what the court mistakenly calls "the Conference Committee report" on the Postal Reorganization Act. In fact, the court's holding depends entirely on its incorrect belief that the language it quotes is part of the "Conference Committee report" (*see*, for example, 24a-26a, 27a); however, the phrase upon which the court placed such great significance is not from the report of the Conference Committee, but rather is from the "Statement of the Managers on the Part of the House" that accompanied the Conference Committee Report when the Conference Committee Report was submitted to the House. Indeed, that phrase, taken alone, expresses a position that was *rejected* by the Conference Committee.

The Conference Committee resolved a number of differences between the Senate and the House on questions of postal ratemaking procedures and standards. To establish the extent to which the rates for each class of mail should be based on the costs of each class, the House had proposed a restrictive, short run costing requirement identified in the House bill as "demonstrably related costs." H. R. 17070, 91st Cong., 2d Sess., § 1201(c) (1970). The Senate, on the other hand, did not wish to limit the costs that must be covered by each class of mail to the short run variable costs of the class.

Accordingly, the Senate bill provided that the rates for each class of mail must be based on *all* costs that are "properly attributable" or "properly assignable" to the particular class of mail, whether those costs are variable (short run and long run) operating costs or fixed overhead and other "institutional" costs. S. 3842, 91st Cong., 2d Sess., § 3704(g)(3) (1970).[4] The Conference Committee clearly rejected the "demonstrably related" costing language of the House bill and adopted instead the "direct and indirect . . . attributable" and "reasonably assignable" language found in § 3622(b)(3) of the Act.

In relying on part of one sentence in the Statement of the House Managers that refers to costs "that vary over the short term in response to changes in volume" (House Managers' Statement, 1970 U. S. Code Cong. & Ad. News at 3720), the Second Circuit panel, in the mistaken belief that it was the Conference Committee Report, uncritically assumed that a short run costing requirement identical to that found in the House bill was incorporated into the Act. But, as noted, the Conference Committee had rejected the House's "demonstrably related" costing language and instead had adopted, with a refinement that apparently was first proposed in conference, the language of the Senate's costing provision. That change, which became § 3622(b)(3) of the Act, parallels the Senate bill and uses the same key costing phrases—"attributable" and "assignable"—that were part of the costing language of the Senate bill but did not appear in the House bill. Compare 39 U. S. C. § 3622(b)(3) with S. 3842, 91st

4. The last version of S. 3842, dated June 3, 1970, referred in § 3704(g)(3) to operating costs, overhead, and other institutional costs "properly assignable" to each class of mail. The earlier version of S. 3842, dated May 14, 1970, referred in § 3703(c)(3) to operating costs, overhead, and other institutional costs "properly attributable" to each class of mail.

Cong., 2d Sess., § 3704(g)(3) (1970), and H. R. 17070, 91st Cong., 2d Sess., § 1201(c) (1970).

The Second Circuit's conclusion that the short run, "demonstrably related costs" standard of the House bill survived the Conference Committee's change in language is clearly contrary to the well-established canon of statutory construction that a change in the language of a bill in favor of quite different language constitutes a rejection of the changed language. As one court stated in a comparable situation:

> "The conference committee recognized the difference in language and consciously chose the Senate version. Since the legislative process—the process by which Congress arrived at the statutory language—is often a better guide than the interpretations of individual legislators or committee reports, . . . we attach some weight to the substitution of the Senate version for that passed by the House. . . . [T]he conscious and deliberate substitution of [the Senate's] language for the House version . . . strongly suggests that the statute as passed contemplates a narrower kind of exemption."

**Southern Pacific Transportation Co. v. Usery,** 539 F. 2d 386, 391 (5th Cir. 1976), *cert. denied sub nom.* **Seaboard Coast Line Railroad Co. v. Occupational Safety & Health Review Commission,** 434 U. S. 874 (1977) (footnote and citations omitted).

Apart from the Second Circuit's error in treating the language in the House Managers' Statement as part of the Conference Committee Report, a further error is in the Second Circuit's use of only part of the House Managers' Statement—the part that refers to costs "that vary over the short term in response to changes in volume"—as de-

fining the sole costing requirement of the Act; this is highlighted by the fact that the *full* language of the House Managers' Statement supports the District of Columbia Circuit's interpretation of the Act rather than the Second Circuit's interpretation. In particular, the relevant part of the House Managers' Statement provides in full that the attributable costs language of the Act

> "establishes a floor for each class of mail equal to . . . those costs, both direct and indirect, that vary over the short term in response to changes in volume of a particular class *or, even though fixed rather than variable, are the consequence of providing the specific service involved.*" House Managers' Statement, 1970 U. S. Code Cong. & Ad. News at 3720 (emphasis added).

The House Managers' Statement goes on to state that the costing provision of the Conference Committee substitute "provides for a judgmental assignment of *some part* of the remaining costs." *Id.* (emphasis added). This language is more consistent with the interpretation announced by the District of Columbia Circuit than with the Second Circuit's restrictive interpretation.

But more important, even assuming *arguendo* that the House Managers' Statement supports the Second Circuit's short run costing interpretation, that Statement is unreliable as authoritative legislative history. The House Managers' Statement was never even put before the Senate. In fact, the Senate had already adopted the Conference Committee Report when, three days later, the House Managers' Statement was published and submitted to the House along with the Conference Committee Report. The courts have cautioned that statements made by members of one house that were not agreed to or considered by the other house are not determinative of Congressional

intent. **Vaughn v. Rosen,** 523 F. 2d 1136, 1142 (D. C. Cir. 1975); **Soucie v. David,** 448 F. 2d 1067, 1077 n. 39 (D. C. Cir. 1971); **Davidson v. Gardner,** 370 F. 2d 803, 828 (6th Cir. 1963).

Significantly, shortly after the Postal Reorganization Act was passed, Congress condemned the unilateral preparation and use of post-conference statements by the conferees of one house by requiring through specific legislation that an identical explanatory statement, jointly prepared by the Senate and House conferees, accompany the conference committee report in both the Senate and the House. Legislative Reorganization Act of 1970, Pub. L. No. 91-510, § 125, 84 Stat. 1140, 1159-60 (repealed 1979), reprinted in 1970 U. S. Code Cong. & Ad. News 1332, at 1354-55. (9d-11d). See also H. R. Rep. No. 1215, 91st Cong., 2d Sess. (1970), reprinted in 1970 U. S. Code Cong. & Ad. News 4417, at 4492-95. That same principle is now found in the rules of both houses of Congress. Rule XXVIII.4, Standing Rules of the Senate; Rule XXVIII(1)(c), Rules of the House of Representatives. See 125 Cong. Rec. S16597 (daily ed., Nov. 14, 1979). Obviously, a statement made by certain members of the House after the Conference Committee bill had already been adopted by the Senate does not reflect the views of the Senate or of Congress as a whole, since the Senate never had an opportunity to object to, or in any other way consider, the House Managers' Statement.

The Second Circuit's exclusive reliance here on a unilateral statement of the House Managers is especially erroneous because the statement in question was made by members of the body which did *not* prevail on the costing issue in the Conference Committee. The House Managers themselves explicitly acknowledged that "[t]he conference substitute [bill] adopts the Senate provision" concerning ratemaking (House Managers' Statement, 1970 U. S. Code

Cong. & Ad. News at 3720), rather than the short run "demonstrably related costs" provision of the House bill. The cases are clear that when a bill is revised in Conference Committee, the views of those whose language was not accepted cannot control the interpretation of the version adopted. **Hardin v. Kentucky Utilities Co.**, 390 U. S. 1, 11 (1968); **American Smelting & Refining Co. v. Occupational Safety & Health Review Commission**, 501 F. 2d 504 (8th Cir. 1974).

In these circumstances, the determination by the Second Circuit that the Congress nevertheless adopted the House's costing approach is obviously erroneous.

### B. Congress Has Endorsed the District of Columbia Circuit's Interpretation of the Act.

That the District of Columbia Circuit in **NAGCP-I** correctly ascertained the Congressional intent on the costing issue has been confirmed by Congress in that Congress has failed to adopt legislative proposals designed to overturn that interpretation.

Even before the District of Columbia Circuit issued its **NAGCP-I** opinion, efforts were initiated to have Congress reject the unanimous concurring opinion of the District of Columbia Circuit in the **American Publishers** decision, which foreshadowed the decision in **NAGCP-I.** Responding to attacks on the **Publishers** concurring opinion, Congress, in § 7 of the Postal Reorganization Act Amendments of 1976,[5] established a five-member Commission on Postal Service. (3d-8d). In § 7(b)(3)(C) of that act, Congress specifically instructed the Commission on Postal Service to study the ratemaking provisions of the Act. 90 Stat. 1308. (5d). Following the decision in **NAGCP-I** on December 28, 1976, the Commission also

5. Pub. L. No. 94-421, 90 Stat. 1303, 1307-10. Section 7 was not codified as part of 39 U. S. C.

studied that decision in complying with its mandate to determine whether the ratemaking provisions of the Act needed legislative attention.

The Commission on Postal Service issued its report in April 1977, approximately four months after **NAGCP-I** was decided. In its report, the Commission specifically recommended legislation to overrule **NAGCP-I** and limit the costs that could be attributed to the various classes of mail on a cost-of-service basis to no more than 60% of total postal costs. 1 **Report of the Commission on Postal Service,** at 63, 64 (April, 1977). The Commission's proposal to overturn **NAGCP-I** by limiting attributable costs was subsequently incorporated in S. 3229, 95th Cong., 2d Sess., § 6(a) (1978), and H. R. 7700, 95th Cong., 2d Sess., § 2(b) (1978). It was discussed in Congress and before Congressional committees. See **Postal Service Amendments of 1978: Hearings Before the Subcommittee on Energy, Nuclear Proliferation, and Federal Services on S. 3229 and H. R. 7700,** 95th Cong., 2d Sess. 618, 625-26 (1978). But despite the recommendation of the Commission on Postal Service, Congress did not amend the Act or take any other action overruling **NAGCP-I.**

The only permissible inference that may be drawn from Congress' refusal to adopt legislation rejecting **NAGCP-I** is that Congress endorses the District of Columbia Circuit's interpretation of the Act. See, *e.g.*, **Blau v. Lehman,** 368 U. S. 403, at 412-13 (1962); **Kay v. Federal Communications Commission,** 443 F. 2d 638, 646-47 (D. C. Cir. 1970). Clearly, the Second Circuit's decision disagreeing with the District of Columbia Circuit is erroneous and should be reversed by this Court.

## CONCLUSION

The Second Circuit seriously erred when it rejected the District of Columbia Circuit's considered and consistent interpretation of the Act. The Second Circuit failed to recognize that the language in the House Managers' Statement was not part of the Conference Committee Report and indeed had never been before the Senate at all, having been published after the Senate had adopted the Conference Committee Report, and the Second Circuit misapprehended even the meaning and significance of the language it selected from the House Managers' Statement, placing its entire reliance upon that language.

The importance of this patent error cannot be overstated. It taints the basic premise of the Second Circuit's decision, which is in direct conflict with the consistently repeated statutory interpretation of the District of Columbia Circuit and the tacit Congressional endorsement of the District of Columbia Circuit's interpretation. Premised on its erroneous assumption, the Second Circuit rejected the District of Columbia Circuit's consistent views in its series of decisions and created the serious conflict between circuits to which this petition is directed.

Because of the sharp disagreement between the Second Circuit and the District of Columbia Circuit on a critical question urgently calling for prompt determination, the question of the proper interpretation of the ratemaking provisions of the Act must be resolved by this Court. Only then will the Commission, the Postal Service, mail users, and the Postal Service's competitors know which interpretation of the Act is to be followed in establishing nationwide postal rates.

WHEREFORE, Petitioner United Parcel Service of America, Inc. respectfully requests that the writ of certiorari to the United States Court of Appeals for the Second Circuit be granted.

Respectfully submitted,

BERNARD G. SEGAL,
ROBERT L. KENDALL, JR.,
JOHN E. MCKEEVER,
*Attorneys for Petitioner United Parcel Service of America, Inc.*

SCHNADER, HARRISON, SEGAL & LEWIS
1719 Packard Building
Philadelphia, Pennsylvania 19102

*Of Counsel.*

Dated: January 25, 1982

## APPENDIX D

References to Appendices A, B, and C are to the Appendices to the Petition for a Writ of Certiorari in **National Association of Greeting Card Publishers v. United States Postal Service,** No. 81-1304, a companion case, and are incorporated herein by reference. This Appendix D contains material not included in Appendices A, B, and C.

## APPENDIX D

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the eleventh day of January, one thousand nine hundred and eighty-two.

Present:

Hon. Thomas J. Meskill

Hon. Amalya L. Kearse

*Circuit Judges*

Hon. Albert W. Coffrin

*District Judge*

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Docket Nos. 81-4035, 81-4037, 81-4047, 81-4075

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Newsweek, Inc., Time Incorporated, Magazine Publishers Association, Inc., Council of Public Utility Mailers, Reader's Digest Association, Inc., and United Parcel Service of America, Inc.,

*Petitioners,*

*v.*

United States Postal Service,

*Respondent,*

Warshawsky & Company, American Business Press Inc., Dow Jones & Company, Inc., International Labor Press Association, AFL-CIO/CLC, Parcel Shippers Association, Direct Mail/Marketing Association, Inc., March of Dimes, Mail Order Association of America, Association of American Publishers, Inc., Recording Industry Assoc. of America, Inc., National Association of Greeting Card Publishers, Magazine Publishers Association, Inc., Classroom Publishers Association, American Lung Association, National Easter Seal Society, St. Jude Children's Research Hospital, American Cancer Society and National Wildlife Federation, et al.,

*Intervenors.*

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(Filed January 11, 1982)

A petition for a rehearing having been filed herein by counsel for the petitioner, Council of Public Utility Mailers,

Upon consideration thereof, it is

Ordered that said petition be and it hereby is denied.

A. Daniel Fusaro

*Clerk*

by /s/ FRANCIS X. GINDHART

Francis X. Gindhart

*Chief Deputy Clerk*

## SECTION 7 OF THE POSTAL REORGANIZATION ACT AMENDMENTS OF 1976, PUB. L. NO. 94-421, 90 STAT. 1303, 1307-10

(reprinted in 1976 U.S. Code Cong. and Ad. News 1303, 1307-10)

Sec. 7. (a)(1) There is hereby established the Commission on Postal Service (hereinafter in this section referred to as the "Commission"). The Commission shall be composed of 7 members, to be selected as follows:

(A) 3 appointed by the President of the United States, of whom one shall be appointed as chairman;

(B) 2 appointed by the President pro tempore of the Senate, of whom one shall be an individual who is a member of the work force of the United States Postal Service; and

(C) 2 appointed by the Speaker of the House of Representatives, of whom one shall be an individual who is a member of the work force of the United States Postal Service.

The Postmaster General of the United States and the Chairman of the Postal Rate Commission shall serve as ex officio members of the Commission, without the right to vote.

(2) The members of the Commission shall be appointed within 15 days following the date of the enactment of this Act. In the event that all of the members of the Commission have not been appointed at the close of such 15-day period, a majority of the members appointed to the Commission shall constitute a quorum for the conduct of business by the Commission.

(3) Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(b) The Commission shall identify and study the problems facing the United States Postal Service and recommend actions to be taken to resolve those problems. The Commission shall not be limited to any particular subject areas for consideration but the Commission—

(1) shall identify and study the public service aspects of the United States Postal Service, shall recommend to what extent and by what means such aspects may be defined and costs thereof reasonably estimated, and shall, insofar as practicable, identify any difference between—

(A) the costs that the Postal Service should reasonably be expected to incur in providing postal services in accordance with the policies of title 39, United States Code, and

(B) the revenues that the Postal Service may reasonably be expected to receive from rates and fees for postal services, with due consideration to the fact that demands for postal services may be reflected by changes in the levels of such fees;

(2) shall determine the extent to which the public service aspects of the Postal Service shall be supported by appropriations and shall recommend a plan for such appropriations with due consideration being given to—

(A) the economic and social benefits of the postal system to the user and recipient of the mail,

(B) the relative economic ability of the users of various classes of mail to absorb the costs of the postal system,

(C) the extent to which the costs of maintaining a system which would provide a reasonable degree of regular postal services to the entire public without regard to individual usage, and the degree to which such costs should be borne by the public generally rather than by mail users in particular,

(D) the relative economic and social benefits of other uses of private and public funds, and

(E) the need of the Postal Service for adequate and dependable funding and for systematic planning and rate-making to provide efficient and economical postal services in accordance with the policies of title 39, United States Code;

(3) shall study the desirability and feasibility of—

(A) the ratemaking procedures established under title 39, United States Code, particularly the functions and responsibilities of the Postal Rate Commission, and shall develop recommendations for more expeditious and economical procedures that are responsive to the needs of the Postal Service and the public, including, if the Commission recommends the abolition of the Postal Rate Commission, a method of assuring that changes in postal rates shall be reviewed independently outside the Postal Service,

(B) a system in which changes in postal rates shall not exceed changes in consumer prices unless greater changes in such rates are approved by a body independent of the Postal Service,

(C) the ratemaking criteria established by section 3622(b) of title 39, United States Code, and

(D) a statutory requirement for cost attributions to particular classes of mail or types of mail service;

(4) shall review the appropriateness of current and future service levels and the extent to which, if any, such levels should be supported by appropriations; and

(5) shall review the long range impact of new electronic fund transfers and communication techniques, the effect of such transfers and techniques on mail volumes and revenues of the Postal Service, and the feasibility of the Postal Service operating such systems.

(c)(1) For purposes of carrying out its functions under this section, the Commission may sit and act at such times and places and receive such evidence and testimony as it considers advisable.

(2) The Commission may secure directly from any department or agency of the United States information and assistance necessary to carry out its duties under this section. Each department or agency is authorized and directed, to the extent permitted by law and within the limits of available funds, to furnish information and assistance to the Commission.

(3) When so authorized by the Commission, any members or agent of the Commission may take any action which the Commission is authorized to take by this section.

(4) All meetings, hearings, conferences, or other proceedings of the Commission shall be open to the chairmen of the appropriate committees of the Congress or their designees and reasonable notice of such meetings or hearings shall be given to such chairmen or their designees.

(d)(1) Except as provided in paragraph (2), members of the Commission each shall receive as compensation the daily equivalent of the annual rate of basic pay in effect for Grade GS-18 for each day (including traveltime) during which they are engaged in the actual performance of duties vested in the Commission.

(2) Members of the Commission who are full-time officers or employees of the United States shall receive no additional pay on account of their service on the Commission.

(3) While away from their home or regular places of business in the performance of service for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

(e) The Commission may appoint and fix the compensation of such personnel as it considers advisable without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and such personnel may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at a rate not to exceed the maximum rate authorized by the General Schedule. The Commission may procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the annual rate of basic pay in effect for the maximum rate authorized by the General Schedule.

(f)(1) The Commission shall transmit to the President and to each House of the Congress a final report con-

taining a detailed statement of its findings and recommendations, together with any individual views, on or before March 15, 1977.

(2) The Commission shall not be required to obtain the clearance of any Federal agency before the transmittal of its report.

(g) The Commission shall cease to exist 60 days after the transmission of its final report under subsection (f) of this section and all offices and employment under it shall then expire.

(h) There are authorized to be appropriated to the Postal Service Fund established under section 2003 of title 39, United States Code, without fiscal year limitation, such sums as may be necessary to carry out the provisions of this section. Expenses incurred by the Commission shall be paid out of the Postal Service Fund.

## SECTION 125 OF THE LEGISLATIVE REORGANIZATION ACT OF 1970, PUB. L. NO. 91-510, 84 STAT. 1140, 1159 (REPEALED 1979)

(reprinted in 1970 U.S. Code Cong. and Ad. News 1332, 1354-55)

CONFERENCE REPORTS

Sec. 125. (a)(1) The section caption of section 135 of the Legislative Reorganization Act of 1946 (2 U.S.C. 190c) is amended to read as follows:

"SENATE CONFERENCE REPORTS".

(2) Section 135 of the Legislative Reorganization Act of 1946 (2 U.S.C. 190c) is amended by adding at the end thereof the following new subsections:

"(c) Each report made by a committee of conference to the Senate shall be printed as a report of the Senate. As so printed, such report shall be accompanied by an explanatory statement prepared jointly by the conferees on the part of the House and the conferees on the part of the Senate. Such statement shall be sufficiently detailed and explicit to inform the Senate as to the effect which the amendments or propositions contained in such report will have upon the measure to which those amendments or propositions relate.

"(d) If time for debate in the consideration of any report of a committee of conference upon the floor of the Senate is limited, the time allotted for debate shall be equally divided between the majority party and the minority party."

(3) The item relating to section 135 contained in the table of contents of the Legislative Re-

organization Act of 1946 (60 Stat. 813) is amended to read as follows:

"Sec. 135. Senate Conference Reports."

(b)(1) Paragraph (c) of clause 1 of Rule XXVIII of the Rules of the House of Representatives is amended to read as follows:

> "(c) Each report made by a committee of conference to the House shall be printed as a report of the House. As so printed, such report shall be accompanied by an explanatory statement prepared jointly by the conferees on the part of the House and the conferees on the part of the Senate. Such statement shall be sufficiently detailed and explicit to inform the House as to the effect which the amendments or propositions contained in such report will have upon the measure to which those amendments or propositions relate."

(2) Clause 2 of Rule XXVIII of the Rules of the House of Representatives is amended to read as follows:

> "2. It shall not be in order to consider the report of a committee of conference unless such report and the accompanying statement shall have been printed in the Record, at least three calendar days (excluding Saturdays, Sundays, and legal holidays) prior to the consideration of such report by the House; but this provision does not apply during the last six days of the session. Nor shall it be in order to consider any conference report unless copies of the report and accompanying statement are then available on the floor. The time allotted for debate in the consideration of any such report shall be equally divided between the majority party and the minority party."

(3) Clause 3 of Rule XXVIII of the Rules of the House of Representatives is amended—

(1) by striking out ", but their report shall not include matter not committed to the conference committee by either House."; and

(2) by inserting in lieu thereof the following: ", but the introduction of any language in that substitute presenting a specific additional topic, question, issue, or proposition not committed to the conference committee by either House shall not constitute a germane modification of the matter in disagreement. Moreover, their report shall not include matter not committed to the conference committee by either House, nor shall their report include a modification of any specific topic, question, issue, or proposition committed to the conference committee by either or both Houses if that modification is beyond the scope of that specific topic, question, issue, or proposition as so committed to the conference committee."

# Petitioner's Reply Brief

Supreme Court, U.S.
FILED
APR 9 1982
ALEXANDER L. STEVAS
CLERK

No. 81-1381

IN THE

# Supreme Court of the United States

October Term, 1981

UNITED PARCEL SERVICE OF AMERICA, INC.,
*Petitioner,*

*v.*

UNITED STATES POSTAL SERVICE,
*Respondent.*

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

## BRIEF OF PETITIONER UNITED PARCEL SERVICE OF AMERICA, INC. IN REPLY TO BRIEF OF DIRECT MAIL/MARKETING ASSOCIATION, INC.

BERNARD G. SEGAL,
*Counsel of Record*
ROBERT L. KENDALL, JR.,
JOHN E. McKEEVER,
*Attorneys for Petitioner*

SCHNADER, HARRISON, SEGAL & LEWIS
1719 Packard Building
Philadelphia, Pennsylvania 19102
(215) 988-2000
*Of Counsel.*

International Printing Co., 711 So. 60th St., Phila., Pa. 19143 — Tel. (215) 727-6711

No. 81-1381

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1981

UNITED PARCEL SERVICE OF AMERICA, INC.,
*Petitioner,*

*v.*

UNITED STATES POSTAL SERVICE,
*Respondent.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

## BRIEF OF PETITIONER UNITED PARCEL SERVICE OF AMERICA, INC. IN REPLY TO BRIEF OF DIRECT MAIL/MARKETING ASSOCIATION, INC.

Pursuant to Rule 22.5 of the Rules of this Court, Petitioner United Parcel Service of America, Inc. ("UPS") submits this brief in response to the brief filed by Direct Mail/Marketing Association, Inc. ("DMMA") in No. 81-1381 and in the related No. 81-1304.

All parties before this Court seek issuance of a writ of certiorari. Although DMMA calls its filing a "Brief in Opposition," DMMA in fact supports the issuance of the writ. However, DMMA suggests that the Court

"defer ruling" on the instant UPS Petition for Certiorari and on the related Petition for Certiorari filed by the National Association of Greeting Card Publishers ("NAGCP") in No. 81-1304 until the Court "can consider any petitions that *may* be filed" with respect to appeals that are pending before the Second Circuit in a subsequent phase of the same administrative proceeding (**Time Incorporated, et al. v. United States Postal Service,** Nos. 81-4183, *et al.*). DMMA Brief in Opposition at 4-5 (emphasis added). UPS urges the Court not to follow the course of delay proposed by DMMA.

The **Time** appeals now pending in the Second Circuit raise issues under different sections of the Postal Reorganization Act of 1970, as amended, and which are completely different from the issue raised in the UPS and the NAGCP petitions presently before this Court. The UPS and NAGCP petitions concern the interpretation of 39 U. S. C. § 3622(b)(3), the costing provision of the Postal Reorganization Act, whereas the issues in the **Time** appeals involve the construction of 39 U. S. C. § 3625, which delineates the authority of the Governors of the United States Postal Service to alter rates recommended by the Postal Rate Commission and the requirements that must be met by the Governors when they exercise that authority.[1] In particular, the issue raised by UPS and NAGCP here is whether the rates recommended by the Commission and implemented by the Governors in March of 1981 were based on a proper interpretation of the costing standards

1. In addition to the administrative law jurisdictional issues under 39 U. S. C. § 3625 raised by the **Time** appeals, DMMA has raised before the Second Circuit a question relating to the jurisdiction of the district courts to grant preliminary relief from the implementation of modified postal rates by the Governors of the Postal Service. Here again, another section of the Act is involved—39 U. S. C. § 3628, the judicial review provision of the Act.

of the Act, as briefly and forcefully confirmed by the Question Presented in the brief filed by the Solicitor General on behalf of the United States Postal Service, whereas the appeals to be heard by the Second Circuit involve the questions whether the Governors had the authority to implement rates different from those recommended by the Commission and, if so, whether the Governors adequately supported their modifications of the Commission's rates.[2] While there are other issues in the **Time** appeals, no different costing issue under the Act can be raised, and that issue remains the critical one which must be decided to guide the parties in the next postal rate case. UPS believes that the fundamental issue raised in the UPS and NAGCP petitions presently before this Court should promptly be resolved and that it is best addressed in the context of the clear conflict created by the sharply differing interpretations of 39 U. S. C. § 3622(b)(3) by the Second Circuit and by the District of Columbia Circuit.

More important, DMMA's approach would unconscionably delay the resolution of the crucial statutory interpretation issue raised by UPS and NAGCP, and would seriously impair the chance that there would be a decision of the Court to guide the next postal rate case. The subsequent, unrelated appeals now pending in the Second Circuit are still awaiting argument.[3] It is possible, almost certain, that much time will pass before the Second Circuit issues its opinion and petitions for reconsideration or for reargument en banc, if filed, are decided. It will

2. As the Postal Service points out in its brief to the Court (at 9-12), the Governors' subsequent modifications of *some* of the rates that are the subject of the instant UPS and NAGCP petitions do not render this case moot. For example, the Governors did not modify the Commission's rates for parcel post service, where UPS competes with the Postal Service.

3. Argument is scheduled for April 21, 1982.

be yet longer before this Court could know whether or not any party will seek certiorari from the Second Circuit's ultimate decision.

To delay the disposition of the instant petitions until next fall or winter will be harmful to the Postal Service, to the Commission, to concerned parties, and to the public interest for by that time the Postal Service will have prepared and may well have filed another general ratemaking proceeding, a date no one can predict in light of the uncertainties prompting such action.[4] If this Court has not resolved the sharp conflict between circuits, as requested by UPS and NAGCP, then the Postal Service, the Commission, users of the mails, and competitors of the Postal Service will confront crippling uncertainties as to whether or not postal rates must be based on the interpretation of the statute enunciated by the District of Columbia Circuit, or on the contrary interpretation announced by the Second Circuit. The Postal Service generates more than $23 billion of revenue a year, and postal rate levels affect not only the Postal Service and its competitors but also virtually every business and individual in the United States. The next rate proceeding will be hopelessly confused if this Court has not acted in time to instruct the Postal Service and the Commission in the proper administration of the statutory scheme.

4. In the first ten years of the Act, there were five rate cases. The rate request involved here was filed on April 21, 1980.

## CONCLUSION

Every party before this Court supports certiorari to resolve the critical conflict between the circuits that is at issue here. In particular, the Postal Service, as respondent, agrees that a writ of certiorari should be granted. DMMA also supports certiorari. However, DMMA counsel delay by this Court because of the possibility that some issue in the pending appeals in the Second Circuit arising under different sections of the Act may be worthy of certiorari and be brought before the Court.

As we have shown, the delay suggested by DMMA would postpone the resolution of the issue raised by UPS and NAGCP to no useful purpose and would do serious harm in the interim to the mailing public generally and to competitors of the Postal Service in the private sector. Accordingly, UPS submits that the Court should not defer action on the UPS and NAGCP petitions, but rather should grant those petitions promptly.

Respectfully submitted,

BERNARD G. SEGAL,
ROBERT L. KENDALL, JR.,
JOHN E. MCKEEVER,
*Attorneys for Petitioner United Parcel Service of America, Inc.*

1719 Packard Building
SCHNADER, HARRISON, SEGAL & LEWIS
Philadelphia, Pennsylvania 19102
(215) 988-2000

*Of Counsel.*

April 8, 1982

# Docket Sheet

| NO. 81-1381-CFX | TITLE United Parcel Service of America, Inc., Petitioner |
|---|---|
| VIDE: 81-1304 | v. |
| 81-1868 | United States Postal Service, et al. |

| DOCKETED | COURT |
|---|---|
| Jan. 25, 1982 | United States Court of Appeals for the Second Circuit |

| DATE | PROCEEDINGS AND ORDERS |
|---|---|
| | Counsel for Petitioner: Robert L. Kendall , Bernard G. Segal, |
| | Counsel for Respondents: Solicitor General, Raymond N. Shibley, Robert A. Saltzstein, William J. Olson, Toni K. Allen, Matthew S. Perlman, John M. Burzio, (Over) |
| Jan. 25, 1982 | Petition for writ of certiorari filed. (Record filed). |
| Feb. 3, 1982 | Order extending time to file a response to the petition until Feb. 24, 1982. |
| Feb. 5, 1982 | Order extending time for respondent Dow Jones & Co., Inc. to file a response to the petition until Feb. 24, 1982. |
| Feb. 17, 1982 | Order extending time for respondent Direct Mail/Marketing Association, Inc., to file a response to the petition until March 13, 1982. |
| Mar. 9, 1982 | Order extending time for the Government to file a response to the petition until March 27, 1982. |
| Mar. 23, 1982 | Joint memorandum of respondents Dow Jones & Company, Inc., and Newsweek, Inc. in support of petition filed. (Vide: 81-1304). |
| Mar. 26, 1982 | Brief of respondent Direct Mail/Marketing Association, Inc. in opposition filed. (Vide: 81-1304). |
| Mar. 26, 1982 | Brief of respondent United States Postal Service in support of petition filed. (Vide: 81-1304). |
| Mar. 31, 1982 | DISTRIBUTED. 4-16. |
| Apr. 9, 1982 | Reply brief of petitioner United Parcel Service of America, Inc. to brief of respondent Direct Mail/Marketing Association, Inc. filed. (D). |
| Apr. 19, 1982 | Petition GRANTED. The case is consoliated with 81-1304 and a total of one hour is allotted for oral argument. |
| | --- |
| Apr. 29, 1982 | Order extending time to file the joint appendix and petitioner's brief on the merits until July 2, 1982. |
| June 29, 1982 | Order extending time to file the respondents' brief on the merits until Aug. 23, 1982. |
| July 2, 1982 | Brief of petitioner National Association of Greeting Card Publishers filed. (Vide: 81-1304) (Petitioner in 81-1304). |
| July 2, 1982 | Joint appendix filed. (Vide: 81-1304) |
| July 2, 1982 | Brief for intervenor Direct Mail/Marketing Association, Inc. filed. (Vide: 81-1304). |
| | (Over) |

81-1381

*Title*

No.

| DATE | | PROCEEDINGS AND ORDERS |
|---|---|---|
| | | Counsel for respondents cont'd: Dana T. Ackerly, Eli Davidson Minton, Michael F. McBride, David C. Todd Ian D. Volner |
| July 8, 1982 | Brief | of petitioner United Parcel Service of America, Inc., filed. (Vide: 81-1304). |
| Aug. 18, 1982 | | Order further extending time to file the government's brief on the merits until Sept. 7, 1982. |
| Sept. 7, 1982 | Brief | for the United States Postal Service filed. (Vide: 81-1304). |
| Sept. 7, 1982 | Brief | for respondent Magazine Publishers Association, Inc., filed. (Vide: 81-1304). |
| Sept. 7, 1982 | Brief | for intervenor-respondents March of Dimes Birth Defects Foundation filed. (Vide: 81-1304). |
| Sept. 7, 1982 | Brief | of respondent Dow Jones & Company, Inc. filed. (Vide: 81-1304). |
| Sept. 7, 1982 | Brief | of respondent American Business Press filed. (Vide: 81-1304). |
| Sept. 7, 1982 | Brief | of respondents Newsweek, Inc. and Time Incorporated filed. (Vide: 81-1304). |
| Sept. 7, 1982 | Brief | of respondents Recording Industry Association of America, et al. filed. (Vide: 81-1304). |
| Sept. 7, 1982 | Brief | of respondents Mail Order Association of America, et al. filed. (Vide: 81-1304). |
| Sept. 7, 1982 | Motion | of American Newspaper Publishers Association and National Newspaper Association for leave to file brief as amici curiae filed. (Vide: 81-1304). |
| Sept. 15, 1982 | | CIRCULATED. |
| Sept. 20, 1982 | | Motion of Direct Mail/Marketing Association, Inc. for leave to participate in oral argument filed. |
| July 15, 1982 | | Motion of petitioners for divided argument and for additional time for oral argument filed. (also in 81-1304) |
| Sept. 24, 1982 | | Opposition of Solicitor General to motion of Direct Mail/Marketing Association, Inc. for divided argument filed. (Also in 81-1304). |
| Sept. 24, 1982 | | Opposition of petitioners to motion of Direct Mail/ Marketing Association, Inc. for divided argument filed. (Also in 81-1304). |
| Oct. 4, 1982 | | The motion of petitioner for divided argument is GRANTED. The request for additional time for oral argument is DENIED. The motion of American Newspaper Publishers Association, et al. for leave to file a brief as amici curiae is GRANTED. The motion of Direct Mail/Marketing Association, Inc. for divided argument is DENIED. |

(Card No. 2)

| NO. | TITLE |
|---|---|
| 81-1381-CFX<br>(Vide: 81-1304) | United Parcel Service of America, Inc., Petitioner<br>v.<br>United States Postal Service, et al. |

| DOCKETED | COURT |
|---|---|
| Jan. 25, 1982 | United States Court of Appeals for the Second Circuit |

| DATE | PROCEEDINGS AND ORDERS |
|---|---|
| Nov. 18, 1982 | Reply brief of petitioner United Parcel Service of America, Inc. filed. (Vide: 81-1304) (D). |
| Nov. 19, 1982 | Reply brief of petitioner National Association of Greeting Card Publishers filed. (Vide: 81-1304). (D). |
| Nov. 24, 1982 | Reply brief for Intervenor Direct Mail/Marketing Association, Inc. filed. (D). (Vide: 81-1304). |
| Dec. 1, 1982 | ARGUED. |